

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20-cv-242-MOC-WCM**

DONNA S. SHOOK, as Executrix of the)
Estate of Jean S. Satterfield, aka Jean S.)
Penland,)

Plaintiff,)

vs.)

BOSTON SCIENTIFIC CORP.,)

Defendant.)

ORDER

THIS MATTER comes before the Court on a Motion to Dismiss filed by Defendant Boston Scientific Corp., (Doc. No. 6), in which Defendant asks this Court to dismiss Plaintiff's Complaint as preempted by the federal Food, Drug, and Cosmetic Act, as amended by the Medical Device Amendments of 1976, 21 U.S.C. § 360k(a).

In response to the motion to dismiss, Plaintiff requests that this Court allow Plaintiff to file an Amended Complaint to cure any defects in the event the original Complaint is subject to dismissal.¹ Defendant counters that any amendment would be futile. In the interest of judicial economy, the Court grants Plaintiff leave to file an Amended Complaint. When the Amended Complaint is filed, the motion to dismiss will then be rendered moot. Until then, however, the Court will not rule on the pending motion to dismiss.

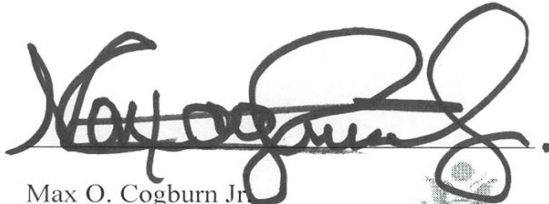
IT IS THEREFORE ORDERED that:

(1) Plaintiffs shall have thirty (30) days in which to file an Amended Complaint. If

¹ Plaintiff should have filed a separate motion to amend, pursuant to Local Civil Rule 7.1(c)(2). Nevertheless, the Court will allow the amendment.

Plaintiff does not file an Amended Complaint within that time period, the Court will rule on the pending motion to dismiss.

Signed: December 11, 2020



Max O. Cogburn Jr.
United States District Judge